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IN THE

Supreme Court of the United States

OCTOBER TERM, 1999

BOY SCOUTS OF AMERICA, *et al.*,
Petitioners,

v.

JAMES DALE,
Respondent.

On Writ of Certiorari To The Supreme Court of the State of New Jersey

BRIEF OF THE BECKET FUND FOR RELIGIOUS LIBERTY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS*

Pursuant to Rule 37.3 of this Court, the Becket Fund for Religious Liberty respectfully submits this brief *amicus curiae* in support of Petitioners.[1] The Becket Fund is a bipartisan and interfaith public interest law firm that protects the free expression of all religious traditions. *Amicus* is frequently involved, both as counsel of record and as *amicus curiae*, in cases seeking to preserve the freedom of churches, temples and other religiously affiliated organizations to pursue their

[1] All parties have consented to the filing of this brief. Letters of consent from the Petitioners and Respondent have been filed simultaneously with this brief.

missions without excessive government regulation and entanglement.

Our present brief addresses the impact of extending public accommodation laws to encompass religiously affiliated organizations. In particular, this brief focuses on how such a result, coupled with the growing trend toward hostile environment causes of action in public accommodation law, would create an unprecedented intrusion by the government into the doctrines of religious organizations.[2]

SUMMARY OF ARGUMENT

The Boy Scouts of America are a private group that includes religious belief among its membership requirements and has as its basic purpose the conveyance and inculcation in young men of a specific vision of morals and character. The Supreme Court of New Jersey found the Boy Scouts to be a public accommodation subject to that state's Law Against Discrimination. The Court further held that the First Amendment did not give the Boy Scouts any right to apply its particular understanding of morals and character in filling leadership positions when the Boy Scouts' beliefs conflict with the state's values expressed in its Law Against Discrimination.

Denying voluntary private associations with a religious character, such as the Boy Scouts, the First Amendment right to determine the standards to which their members should adhere–and thus who may and may not be a member–threatens the integrity of such organizations' religious identities. At least 43 states, as well as many municipalities, have public

[2]Counsel wishes to acknowledge Carmen Guerricagoitia, Class of 2001 at Georgetown University Law Center, who provided invaluable assistance in the preparation of this brief.

accommodation laws similar to New Jersey's. Some of these have exemptions for certain types of discrimination by religious organizations, such as discrimination based on religion, but many provide no statutory exemption whatsoever for religious groups. Thus without the protection of the First Amendment, which the New Jersey Supreme Court denied to the Boy Scouts below, religious organizations–ranging from churches and temples to religiously affiliated clubs and fraternal organizations–will be denied their freedom of association and be compelled to accept dissident members.

Thus permitting the government freely to intrude upon the doctrines and leadership choices of religious organizations will have a profound effect on their institutional integrity. But this effect will be greatly compounded by another development in public accommodations law: the growth of hostile environment causes of action. Liability based on a defendant's creation of an environment that would be perceived as hostile to members of a protected class, which originated in the employment discrimination context, has been expanded into state and local public accommodation law. Moreover, an environment may be found to be hostile based on speech alone. Arguably, therefore, the constitutional harm does not end when a dissident member is forced on an unwilling religious group. Once admitted to membership in this "public accommodation" he or she will be entitled to be free from a hostile environment–*i.e.*, one characterized by a message of disapproval of his or her dissidence. The specter of a private religious organization first being required to admit members conflicting with the groups' doctrines, and then being required to alter its expression of doctrine to avoid making such members feel unwanted, is a grave threat to the integrity of religious organizations.

ARGUMENT

The New Jersey Supreme Court has held the Boy Scouts of America, a private association with a membership requirement of religious belief,[3] to be a public accommodation for purposes of that State's Law Against Discrimination. *Dale*, 734 A.2d at 1218. The Court has further held that the Free Speech Clause and Freedom of Association affords the Boy Scouts no protection against application of that law. *Id.* at 1229. This holding, if allowed to stand, threatens the integrity of religiously affiliated organizations across the country.

II. THE LOWER COURT'S DECISION THREATENS THE FREE ASSOCIATION RIGHTS OF RELIGIOUS ORGANIZATIONS.

At least 43 states have laws banning discrimination in public accommodations.[4] Many municipalities do as

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[3]*See Dale v. Boy Scouts of America*, 734 A.2d 1196, 1202 (N.J. 1999) (the Scout Law requires that "A Scout is reverent toward God. He is faithful in his religious duties. He respects the beliefs of others."); *Welsh v. Boy Scouts of America*, 993 F.2d 1267, 1275 (7th Cir.) (the purpose of the Boy Scouts "is to train young boys to respect God, their country and their fellow man, while developing a good moral character."), *cert. denied*, 510 U.S. 1012 (1993).

[4]ALASKA STAT. § 18.80.200 *et seq.* (Michie 1999); ARIZ. REV. STAT. § 41-1412 *et seq.* (1999); CAL. CIVIL CODE § 51 (Deering 1999); COLO. REV. STAT. § 24-34-601 (1999); CONN. GEN. STAT. § 46a-63 *et seq.* (1999); DEL. CODE ANN. tit. 6, § 4500 *et seq.* (1999); D.C. CODE ANN. § 1-2519 *et seq.* (1999); FLA. STAT. Ch. 760 *et seq.* (1999); HAW. REV. STAT. ANN. § 489-1 *et seq.* (Michie 1999); IDAHO CODE § 67-5901 *et seq.* (1999); ILL. COMP. STAT. ANN. Ch. 775 5/5-101 *et seq.* (1999); IND. CODE ANN. § 22-9-1-1 *et seq.* (Michie 1999); IOWA CODE § 216 *et seq.* (1997); KAN. STAT. ANN. § 44-1001 *et seq.* (1998); KY. REV. STAT. ANN.

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well.[5] And while some exempt religious organizations generally from their public accommodation laws,[6] more limit that exemption only to certain kinds of accommodations,[7] or

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[4](...continued)
§ 344.110 *et seq.* (Michie 1998); LA. REV. STAT. ANN. § 49:146 (West 1999); ME. REV. STAT. ANN. tit. 5, § 4552 *et seq.* (West 1998); MD. CODE ANN., Discrimination in Public Accommodations § 5 (1999); MASS. ANN. LAWS ch. 272, § 92(A) (Law. Co-op. 1999); MICH. S.A. § 3.548 (1999); MINN. STAT. § 363.01 *et seq.* (1999); MO. R. STAT. § 213.010 *et seq.* (1999); MONT. CODE ANN. § 49-2-101 *et seq.* (1999); NEB. R. STAT. § 20-132 (1999); NEV. REV. STAT. ANN. § 651.050 *et seq.* (Michie 2000); N.H. REV. STAT. ANN. § 354-A:1 *et seq.* (1999); N.J. STAT. ANN. § 10:5-1 *et seq.* (West 1999); N.M. STAT. ANN. § 28-1-1 *et seq.* (Michie 2000); N.Y. EXECUTIVE LAW § 291 *et seq.* (1999); N.D. CENTURY CODE § 14-02.4 (2000); OHIO REV. CODE ANN. § 4112.01 *et seq.* (Anderson 1999); OKLA. STAT. tit. 25, § 1401 *et seq.* (1999); OR. REV. STAT. § 30.670 *et seq.* (1997); PA. CONS. STAT. ti. 43 § 952 *et seq.* (1999); R.I. GEN. LAWS § 11-24-1 *et seq.* (1999); S.C. CODE ANN. § 45-9-10 *et seq.* (1998); S.D. CODIFIED LAWS § 20-13-1 *et seq.* (Michie 2000); TENN. CODE ANN. § 4-21-102 *et seq.* (1999); UTAH CODE ANN. § 13-7-1 *et seq.* (1999); VT. STAT. ANN. tit. 9, § 4501 *et seq.* (2000); VA. CODE ANN. § 2.1-715 *et seq.* (1999); WASH. REV. CODE § 49.60.010 *et seq.* (1999); W. VA. CODE § 5-11-1 *et seq.* (2000); WYO. STAT. ANN. § 6-9-101 (Michie 1999).

[5]*See, e.g.*, N.Y.C. ADMIN. CODE § 8-107(4) (2000); SEATTLE MUNICIPAL CODE § 14.08.040(D).

[6]*See* ARIZ. REV. STAT. § 41-1492.07 (1999); IDAHO CODE § 67-5910(1) (1999); KAN. STAT. ANN. § 44-1002(h) (1998); N.Y. Executive Law § 292(9) (1999).

[7]*See* CONN. GEN. STAT. § 46a-64(b)(4) (1999) (exempting nursing homes "owned, operated by or affiliated with a religious organization"); IOWA CODE § 216.12(1) (1997) (exempts housing); N.J. STAT. ANN. § 10:5-5(l) (West 1999) (exempting "any educational facility operated or maintained by a bona fide religious or sectarian institution"); UTAH CODE ANN. § 13-7-2 (1999) (exempting "any institution, church, any apartment house, club, or place of accommodation which is in its nature distinctly private except to the extent that it is open to the public."); WASH. REV.

(continued...)

only to certain categories of discrimination.[8] Many states have

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[7](...continued)
CODE § 49.60.040(10) (1999) (exempting "any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution . . . .").

[8] *See* IND. CODE ANN. § 22-9-1-3(q)(3) (Michie 1999) ("it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only."); IOWA CODE § 216.7(2) (1997) ("This section shall not apply to (A) Any bona fide religious institution with respect to any qualifications the institution may impose based on religion . . . ."); LA. REV. STAT. ANN. § 49:146(A)(5) (West 1999) ("The provisions of this Section shall not prohibit any religious or private institution of elementary, secondary, or higher education from denying access to any area, accommodation, or facility on the basis of religion or sex."); ME. REV. STAT. ANN. tit. 5, § 4553(10)(G) (West 1998) ("Discrimination in employment, housing, public accommodations and credit on the basis of sexual orientation, except that a religious corporation, association or organization is exempt from these provisions."); MINN. STAT. § 363.02 Subd. 8 (1999) ("Nothing in this chapter prohibits any religious association, religious corporation, or religious society that is not organized for private profit, or any institution organized for educational purposes that is operated, supervised, or controlled by a religious association, religious corporation, or religious society that is not organized for private profit, from: (1) limiting admission to or giving preference to persons of the same religion or denomination; or (2) in matters relating to sexual orientation, taking any action with respect to education, employment, housing and real property, or use of facilities."); NEB. REV. STAT. ANN. § 20-137 (Michie 1999) ("Any place of public accommodation owned by or operated on behalf of a religious corporation, association, or society which gives preference in the use of such place to members of the same faith as that of the administering body shall not be guilty of discriminatory practice."); N.H. REV. STAT. ANN. § 354-A:18 (1999) ("Nothing in this chapter shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or education purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons

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no religious exemptions at all.[9] Thus, if in New Jersey the Boy Scouts, despite their confessional requirement for membership, are a public accommodation, so may be any number of religiously affiliated organizations throughout the country. But for the First Amendment, therefore, there is little to protect their institutional integrity.

Religious institutions are already liable under state law for discrimination in employment, at least on grounds other than religion. This can be so, moreover, even when the position is one of religious significance. *See Diamond v. Congregation Kol Ami*, 1996 WL 942039 (Chi. Com. Hum. Rel.) (Commission may hear sex discrimination case involving the termination of a Jewish Congregation's cantor); *cf. Weissman*

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[8](...continued)
of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained."); N.M. STAT. ANN. § 28-1-9(B) (Michie 2000) ("any religious or denominational institution . . . limiting admission to or giving preference to persons of the same religion or denomination . . . .").

[9] *See* ALASKA STAT. § 18.80.230 (Michie 1999); CAL. CIVIL CODE § 51 (Deering 1999); COLO. REV. STAT. § 24-34-601 (1999); DEL. CODE ANN. tit. 6, § 4502(1) (1999); D.C. CODE ANN. § 1-2519 (1999); FLA. STAT. Ch. 760.07 (1999); HAW. REV. STAT. ANN. § 489-2 (Michie 1999); 775 ILL. COMP. STAT. ANN. 5/5-103 (1999); KY. REV. STAT. ANN. § 344.130 (Michie 1998); MD. CODE ANN., Discrimination in Public Accommodations § 5 (1999); MASS. ANN. LAWS ch. 272, § 92(A) (Law. Co-op. 1999); MONT. CODE ANN. § 49-2-101(20) (1999); NEV. REV. STAT. ANN. § 651.050(2) (Michie 2000); N.D. CENTURY CODE § 14-02.4.02(12) (2000); OHIO REV. CODE ANN. § 4112.02(G) (Anderson 1999); OKLA. STAT. tit. 25, § 1401 (1999); OR. REV. STAT. § 30.675 (1997); 43 PA. CONS. STAT. § 954(l) (1999); R.I. GEN. LAWS § 11-24-3 (1999); S.C. CODE ANN. § 45-9-10 (1998); S.D. CODIFIED LAWS § 20-13-1(12) (Michie 2000); TENN. CODE ANN. § 4-21-102(15) (1999); VT. STAT. ANN. tit. 9, § 4501(8) (2000); W. VA. CODE § 5-11-3(J) (2000); WYO. STAT. ANN. § 6-9-101 (Michie 1999).

v. Congregation Shaare Emeth, 38 F.3d 1038 (8th Cir. 1994) (holding that Reform Jewish Temple could be sued under the Age Discrimination in Employment Act for discharge of temple administrator who was the first contact of the congregation with potential new members). In fact, some states do not exempt churches from liability even for religious discrimination. In *Ward v. Hengle*, 706 N.E.2d 392 (Ohio Ct. App., Summit Cy. 1997), *appeal den.*, 692 N.E.2d 617 (Ohio), *cert. denied*, 525 U.S. 878 (1998), an Ohio Court of Appeals upheld a church's liability under state law for firing a clerical worker because he refused to stop impersonating a monk.

Extending the reach of such anti-discrimination laws into the membership decisions of such organizations would have disastrous consequences for the integrity of their religious identity. The Women's Christian Temperance Union could be forced to admit alcoholics, who are considered disabled, into their meetings. Orthodox Jewish organizations could be required to integrate men with women. Groups dedicated to chastity could not refuse pregnant single women and many groups that believe homosexual activity to be sinful could have to accept gay members. Indeed, religiously affiliated organizations might even have to accept non-adherents as members, *cf. United States v. Columbus Country Club*, 915 F.2d 877 (3d Cir. 1990) (Knights of Columbus country club subject to Fair Housing Act despite conducting religious exercises, displaying a statue of the Virgin Mary, and requiring a recommendation from applicants' parish priests in order to join), *cert. denied*, 501 U.S. 1205 (1991), or include unwelcome material in their publications. At least one religious publication has already been held to be a "public accommodation." In *Pines v. Tomson*, 206 Cal Rptr. 866 (Cal. App. 2 Dist. 1984), the California Unruh Civil Rights Act was successfully employed to force a Christian publisher to include unwanted advertisements in its publication. The non-profit "Family of

Faith Foundation" which operated a telephone directory called the "Christian Yellow Pages," was successfully sued for its policy of "only accept[ing] advertisements placed by a person who affirms orally and in writing that he has accepted Jesus Christ as his personal savior and is a 'born-again' Christian." *Id.* at 868.[10]

The right to associate freely for the purpose of religious expression is essential:

> An individual's freedom to speak, *to worship*, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. . . . Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, *religious*, and cultural ends.

Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984)

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[10]The ever-expanding list of protected classifications only heightens the threat. *See, e.g.*, D.C. CODE. ANN. § 1-2519 (a) ("It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business of any individual"); *Romer v. Evans*, 517 U.S. 620, 629 (1996) (noting that Colorado municipal discrimination laws protect traits including, *inter alia*, "age, military status, marital status, pregnancy, parenthood, custody of a minor child [and] political affiliation," citing ASPEN MUNICIPAL CODE § 13-98(a)(1) (1977); BOULDER REV. CODE §§ 12-1-1 to 12-1-4 (1987); DENVER REV. MUNICIPAL CODE, Art. IV, §§ 28-92 to 28-119 (1991)).

(emphasis added). This is particularly true in the application of anti-discrimination provisions to religious organizations. But for the protection of the First Amendment, public accommodation laws could singlehandedly hijack a wide variety of such groups.[11]

II. THE LOWER COURT'S DECISION THREATENS THE FREE SPEECH RIGHTS OF RELIGIOUS ORGANIZATIONS.

Applying public accommodation laws to religiously affiliated organizations threatens not only their freedom of association but freedom of speech as well. The constitutional harm is not limited to the fact that individuals inimical to an

[11]A particularly chilling result of applying anti-discrimination laws to institutions that espouse religious beliefs is that courts have put themselves into the position of independently evaluating whether the organization's beliefs are truly being violated by such application. *See Dale*, 734 A.2d at 1228 ("Nothing before us, however, suggests that one of Boy Scouts' purposes is to promote the view that homosexuality is immoral."); *Pines*, 206 Cal. Rptr at 877 ("Paragraph 1 simply enjoins appellants from refusing advertisements on the ground the person attempting to place an advertisement is not, or will not affirm that he is, a 'born-again' Christian. Thus, the religious purposes appellants have asserted for publishing the CYP are not impaired."); *E.E.O.C. v. Pacific Press Publishing*, 676 F.2d 1272, 1279 (9th Cir. 1982) ("Preventing discrimination can have no significant impact upon the exercise of Adventist beliefs because the Church proclaims that it does not believe in discriminating against women"); *Vigars v. Valley Christian Center*, 805 F. Supp. 802, 808 (1992) (questioning whether being a pregnant single woman made an unfit role model at a religious school); *Diamond v. Congregation Kol Ami*, 1996 WL 942039 *6 (Chi. Com. Hum. Rel.) ("Kol Ami invites the Administrative Hearing Officer and this Commission to dismiss this case . . . when it made no effort to respect its own religious doctrine by ignoring the minimal qualifications for persons chosen to serve in positions of religious leadership.").

organization's purpose are licensed by the State to intrude into that organization. Once they are hired, housed, or made members, they are then protected from having to be in a "hostile environment"–*i.e.*, one characterized by a message that disapproves of them. Public accommodation laws could thus give them the right not only to associate with the organization but to demand that it alter its basic message.

In *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986), this Court held that Title VII of the Civil Rights Act of 1964 allows a claim of sex discrimination in employment based on the existence of a hostile environment. Hostile environment claims have also been extended to claims of discrimination based on race,[12] disability (under the ADA),[13] religion,[14] and national origin.[15]

Moreover, the theory of a hostile environment constituting illegal discrimination has also expanded into state and local public accommodation laws. *See, e.g., In re Ross*, 1995 WL 907568 (Chi. Comm'n Hum. Rel.) (sex); *Totem Taxi v. N.Y. State Human Rights Appeal Bd.*, 480 N.E.2d 1075 (N.Y. 1985) (race). *See also* MICH. STAT. ANN. § 3.548(103)(i)(iii) (1999) ("Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or

[12]*See, e.g., Jackson v. Quanex Corp.*, 191 F.3d 647 (6th Cir. 1999); *Vaughn v. Pool Offshore Co.*, 683 F.2d 922, 924 (5th Cir. 1982).

[13]*See , e.g., Walton v. Mental Health Ass'n*, 168 F.3d 661 (3rd Cir. 1999); *Shiflett v. GE Fanuc Automation Corp.*, 151 F.3d 1030 (4th Cir. 1998).

[14]*See, e.g., Venters v. City of Delphi*, 123 F.3d 956 (7th Cir. 1997); *Sanders v. Women's Treatment Ctrs*, 9 F. Supp. 2d 929 (N.D. Ill. 1996); *Compston v. Borden, Inc.*, 424 F. Supp. 157 (S.D. Ohio 1976).

[15]*See, e.g., Lopez v. S.B. Thomas, Inc.*, 831 F.2d 1184 (2d Cir. 1987); *Amirmokri v. Baltimore Gas & Elec. Co.*, 60 F.3d 1126 (4th Cir. 1995).

housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.").[16]

What is more, a hostile environment may be created by speech alone. In *Hendler v. Intelecom USA, Inc.*, 963 F. Supp. 200 (E.D.N.Y. 1997), a district court held that a reasonable juror could conclude that jokes concerning a plaintiff's status as a nonsmoker created a hostile working environment under the Americans With Disabilities Act, since the plaintiff was asthmatic. *Id.* at 209. Two photographs depicting the Ayatollah Khomeni and a burning American flag in Iran, hung by a co-employee in her own cubicle, were offered as proof that a bank permitted an environment hostile to an employee of Iranian descent. *Pakizegi v First National Bank of Boston*, 831 F. Supp. 901, 908-09 (D. Mass. 1993) (ruling against plaintiff because employer took steps to eliminate, in the court's terms, the "discriminatory, anti-Iranian conduct"), *aff'd without opinion*, 56 F.3d 59 (1st Cir. 1995). In *Brown Transport v. Human Rel. Com'n*, 578 A.2d 555 (Pa. Common. 1990), a court held an employer liable under the Pennsylvania Human Relations Act for "religious harassment" by including biblical quotations on paychecks and distributing a newsletter with religious content. *See also Mitchell v. Fab Industries, Inc.*, 990 F. Supp. 285, 293 (1998) (holding that "a reasonable Pentecostal missionary could find a workplace," in which derogatory religious comments were made by her superior, "a hostile environment.").

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[16]In a public accommodation, a hostile environment may be created by the actions of not only employees, but also of other customers or members of the "public accommodation." *See D'Amico v. Commodities Exchange Inc.*, 652 N.Y.S. 2d 294 (App. Div. 1st Dept. 1997), (commodity exchange may be liable as a public accommodation to female member for harassing actions of other members).

The same is true in public accommodations law: Speech alone may create a "hostile environment." Thus the Minnesota Supreme Court upheld a finding that owners of a health club violated the state Human Rights Act by, *inter alia*, "displaying fundamentalist Christian religious literature in the literature racks and on the walls of the sports club." *McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 848-49 (Minn. 1985), *appeal dismissed*, 478 U.S. 1015 (1986). *See also Hodges v. Washington Tennis Service Intern. Inc.*, 870 F. Supp. 386 (D.D.C. 1994) (racial slur uttered by employee created a hostile environment for club member; claim dismissed because employer took appropriate remedial action).

Even quite attenuated claims of hostile speech-created environments can be taken seriously. *See In re Haney*, 1994 WL 880339 (Ill. Hum. Rts. Com. 1994) (challenge to University sports mascot, "Chief Illiniwek," who was alleged to be hostile to plaintiff's religious beliefs); *State v. McHarris Gift Ctr.*, 418 N.E.2d 393 (N.Y. 1980) (rejecting 4-3 the claim that a gift shop created a discriminatory environment in a public accommodation by selling Polish "joke novelty items.").

It goes without saying that the beliefs of many religious organizations are contrary to those of their competitors in the marketplace of ideas. This has never been thought to be anything but perfectly natural. However, once religious organizations are transformed by state law into public accommodations, a serious problem arises. If they are now public accommodations that may not discriminate, and if their speech alone creates a discriminatory hostile environment, then it follows that they may no longer speak freely.

If the First Amendment truly affords no protection to private associations with confessional requirements for membership, such as the Boy Scouts, it is not too much to say

that these organizations are now subject to state censorship. They will have to admit ideologically dissident members and then not subject them to the "hostile environment" of the organization's basic views. Mr. Dale, for example, will not only have the right to be a Scoutmaster, but may also acquire the "right" to prevent the Boy Scouts from espousing the view that homosexuality is immoral, lest they create an environment hostile to him. This is an absurd result that the Constitution cannot countenance.

CONCLUSION

For the foregoing reasons the judgment of the New Jersey Supreme Court should be reversed.

Respectfully submitted,

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